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Agenda item 118

Programme budget for the biennium 2008-2009

Report of the Fifth Committee

Rapporteur: Mr. Patrick A. **Chuasoto** (Philippines)

I. Introduction

1. At its 2nd plenary meeting, on 19 September 2008, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its sixty-third session the item entitled "Programme budget for the biennium 2008-2009" and to allocate it to the Fifth Committee.

2. The Fifth Committee considered the question of conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda under agenda item 118 at its 22nd and 28th meetings, on 4 and 23 December 2008. Statements and observations made in the course of the Committee's consideration of the question are reflected in the relevant summary records (A/C.5/63/SR.22 and 28).

3. For its consideration of the question, the Committee had before it the following documents:

(a) Report of the Secretary-General on conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/62/538/Add.2);

(b) Related report of the Advisory Committee on Administrative and Budgetary Questions (A/63/570);

(c) Letter dated 6 March 2007 from the Secretary-General to the President of the General Assembly (A/C.5/61/19).

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II. Consideration of draft resolution A/C.5/63/L.11

4. At its 28th meeting on 23 December, the Committee had before it a draft resolution entitled "Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda" (A/C.5/63/L.11) submitted by the Chairman on the basis of informal consultations coordinated by the representative of Greece.

5. At the same meeting, the Committee adopted draft resolution A/C.5/63/L.11 without a vote (see para. 6 below).

III. Recommendation of the Fifth Committee

6. The Fifth Committee recommends to the General Assembly the adoption of the following draft resolution:

Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

The General Assembly,

Recalling section VIII of its resolution 53/214 of 18 December 1998, its resolutions 55/249 of 12 April 2001, 56/285 of 27 June 2002 and 57/289 of 20 December 2002, section III of its resolution 59/282 of 13 April 2005, paragraph 11 of its resolution 61/262 of 4 April 2007 and its decision 62/547 of 3 April 2008,

Recalling also Article 32 of the Statute of the International Court of Justice, as well as relevant General Assembly resolutions that govern the conditions of service and compensation for the members of the International Court of Justice and the judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994,

Having considered the report of the Secretary-General[1] and the related report of the Advisory Committee on Administrative and Budgetary Questions,[2]

I

1. *Takes note* of the report of the Secretary-General;[1]

2. *Reaffirms* the principle that the conditions of service and compensation for non-Secretariat United Nations officials shall be separate and distinct from those for officials of the Secretariat;

3. *Endorses* the conclusions and recommendations of the Advisory Committee on Administrative and Budgetary Questions contained in its report;[2]

4. *Decides* that any decisions with regard to the pension scheme shall apply only to the members of the International Court of Justice and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and shall not constitute a precedent for any other category of judges working within the United Nations system and that any decision regarding the service of any other category of judges shall be taken on a case-by-case basis;

[1] A/62/538/Add.2.
[2] A/63/570.

5. *Requests* the Secretary-General to make the necessary revisions to article 1, paragraph 2, of the Pension Scheme Regulations for the members of the International Court of Justice and for the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, accordingly;

6. *Also requests* the Secretary-General to report to the General Assembly on any additional expenditures resulting from the above decision in the context of the second performance report on the programme budget for the biennium 2008-2009 and the second performance reports of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda for the biennium 2008-2009;

7. *Recalls* paragraph 11 of its resolution 61/262, in which it requested the Secretary-General to report on options for designing pension schemes, and notes that the Secretary-General has proposed essentially only one option and that, rather than seek the expertise available within the Organization, he has relied on the services of a consultant;

8. *Decides* that the emoluments, pensions, and other conditions of service for the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda shall next be reviewed at its sixty-fifth session, including options for defined benefit and defined contribution pension schemes, and in this regard, requests the Secretary-General to ensure that, in that review, the expertise available within the United Nations is taken full advantage of;

II

Having considered the letter dated 6 March 2007 from the Secretary-General to the President of the General Assembly,[3]

1. *Takes note* of the letter dated 6 March 2007 from the Secretary-General to the President of the General Assembly;[3]

2. *Notes* that the International Criminal Court is not a United Nations entity;

3. *Decides* to amend article 1.7 of the Pension Scheme Regulations for members of the International Court of Justice and article 1.5 of the Pension Scheme Regulations for judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to include a specific reference to the International Criminal Court so as to ensure that no former judge of any of these Courts receives a pension while also serving as a judge of the International Criminal Court;

4. *Notes*, in this regard, the issues of fairness and equality of treatment in respect of the above decision;

5. *Reaffirms* the provisions contained in its resolution 58/318 of 13 September 2004 and emphasizes that the decision contained in paragraph 3 above shall not create a precedent for other organizations outside of the United Nations in respect of the application of pension benefits of judges of the International Court of Justice, the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

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[3] A/C.5/61/19.